

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

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JULIA HUBBARD and KAYLA
GOEDINGHAUS,
Plaintiffs,
v.
TRAMMELL S. CROW, JR., DR. BENJAMIN
TODD ELLER, RICHARD HUBBARD, DR.
MELISSA MILLER, DR. JOSEPH BOLIN,
DR. SCOTT WOODS, DR.
MRUGESHKUMAR SHAH, MICHAEL
CAIN, COE JURACEK, PHILIP ECOB, H.J.
COLE, TEXAS RANGER CODY MITCHELL,
KURT KNEWITZ, PAUL PENDERGRASS,
RALPH ROGERS, ROBERT PRUITT, SCOTT
BRUNSON, CASE GROVER, RICHARD
BUTLER, MARK MOLINA, MICHAEL
HYNES, JR., SHAWN MAYER, JADE
MAYER, RCI HOSPITALITY HOLDINGS,
INC., INTEGRITY BASED MARKETING,
LLC, STORM FITNESS NUTRITION, LLC,
ULTRA COMBAT NUTRITION, LLC,
ECOLIFT HOMES LLC, ELEVATED
WELLNESS PARTNERS LLC, DOE
INDIVIDUALS 1–20, and DOE
COMPANIES 21–30
Defendants.

**DECLARATION OF MATTHEW W. SCHMIDT IN SUPPORT OF PLAINTIFFS' RESPONSE
TO THE ORDER TO SHOW CAUSE**

I, Matthew W. Schmidt, an attorney admitted pro hac vice in the Western District of Texas, of legal age and under penalty of perjury, declare the following:

1. I am a partner with the firm Balestriere Fariello, and I represent Plaintiffs Julia Hubbard (“Hubbard”) and Kayla Goedinghaus (“Goedinghaus”) in the above-captioned action. I submit this declaration in support of Plaintiffs’ Response to this Court’s Order to Show Cause.

Defendants Who Have Not Been Served

2. Despite Plaintiffs’ diligent efforts to serve all Defendants via personal and electronic service, they have not managed to serve Defendants Shah, Cain, Cole, Knewitz, Pendergrass, Butler, and Molina.

Richard Butler

3. Service was attempted upon a Richard Butler on March 28, 2023 who accepted service with direct delivery. However, later that evening, Mr. Butler contacted Plaintiffs’ counsel stating he was in receipt of papers regarding a court proceeding in reference to this action and that he was not the Defendant “Richard Butler” Plaintiffs reference in their complaint. In an April 4, 2023, Mr. Butler confirmed the following (Exhibit A at 1.):

- “a. [He is] not the Richard Butler mentioned in the matter of Hubbard et al., v. Crow et al.;
- b. [He does] not know and [has] never known Julia Hubbard or Kayla Goedinghaus, or any party listed as a defendant in this case;
- c. [His] name is Richard Lee Butler Jr. (age 29) and [lives] in Phoenix, Arizona and [does] not have any ties to this court case; and
- d. [He has] never been a manager at Silver City Cabaret.”

Michael Cain

4. Plaintiffs initiated service upon Defendant Cain for the first time on December 31, 2022, and again on January 2, 2023. All attempts for service upon Defendant were unsuccessful leading up to March 2023 provided that the address was unservable. Service was attempted for a third time upon Defendant Cain on March 22, 2023 at a different address. Again, the attempt for service upon Defendant Cain was unsuccessful due to it being a bad address. The proof of non-service was signed on March 24, 2023.

H.J. Cole

5. Plaintiffs initiated service upon Defendant Cole for the first time on December 26, 2022, and again on December 31, 2022, to no avail because no one answered the door. On March 22, 2023, service was attempted upon Defendant Cole but the person residing at the listed address stated the subject was unknown. Plaintiffs were sent proof of non-service from the process server.

Kurt Knewitz

6. Plaintiffs sent Defendant Knewitz an email to his known email address on November 11, 2022. Defendant Knewitz responded to the email but refused to accept service (Exhibit B.). Plaintiffs, in turn, filed an application for alternative service and extension of time to serve Defendant Knewitz on April 10, 2023. (Dkt. No. 114.)

7. On December 27, 2022, Plaintiffs initiated their first attempt for personal service upon Defendant with no success because the address was to a Pack 'n' Maile Shoppe. Service was attempted upon Defendant for the second time on March 20, 2023 to no avail because the address was a PMB/PO box. On March 20, 2023, the process server signed a proof of non-service.

Mark Molina

8. Plaintiffs contacted Defendant Molina via email attaching the summons and complaint that had been filed in the Central District of California and asked if he was willing to accept service via email to which they received no response. (Exhibit C.) Plaintiffs attempted personal service upon Defendant Molina on January 25, 2023 and on February 1, 2023, but the attempts were not successful. Plaintiffs initiated a third service attempt upon Defendant Molina on March 16, 2023, but the service processor was unable to access the property and neighbors stated that Defendant Molina was not the resident living at the address. The same day, proof of non-service was completed and returned to Plaintiffs.

Paul Pendergrass

9. Plaintiffs attempted to serve Defendant Pendergrass through his attorney via email on November 11, 2022. However, Defendant Pendergrass's attorney did not accept service and instead, on October 10, 2022 Plaintiffs received a letter responding to Plaintiffs' claims against Defendant Pendergrass. (Exhibit D.) On March 20, 2023, Plaintiffs initiated a service attempt for personal service upon Defendant Pendergrass. Defendant Pendergrass was confirmed non-served on March 20, 2022 because the resident at the address and neighbors confirmed he did not live at that address. Plaintiffs received proof of non-service the next day on March 21.

Mrugeshkumar Shah

10. At the time of Plaintiffs attempts to initiate service upon Defendant Shah, he was still in federal prison after he was sentenced to forty-two months in federal prison on March 18, 2021. After investigating the precise whereabouts of Defendant Shah, Plaintiffs inquired with the facility they believed he was located at the time on how to serve him but received no response. (Exhibit E.)

11. After Plaintiffs investigated how to serve Defendant Shah while he was in federal prison with no success. Since this Court's order to show cause, Plaintiffs discovered that Defendant Shah was released on June 9, 2023.

Defendants Who Have Been Served

12. On February 1, 2023, Plaintiffs filed a motion for an extension of time to serve Defendants (Dkt. No. 49) for the first time, not with this Court but in the Central District of California. Since then, Plaintiffs have successfully served five of the sixteen Defendants that remained to be served. Among those five were Defendants Ecob, Rogers, Brunson, Jade Mayer, and Shawn Mayer.

Philip Ecob

13. Service was attempted upon Defendant Ecob on March 25, 2023 and he accepted service with direct delivery. The proof of service was completed on March 26, 2023. Defendant Ecob has not filed an answer to the complaint, nor has he attempted to communicate with Plaintiffs' counsel to meet and confer despite having sufficient time to do so. Defendant Ecob is in default.

Shawn Mayer

14. Plaintiffs initiated service upon Defendant Shawn Mayer on March 18, 2023 and he accepted service with direct delivery.

Jade Mayer

15. Plaintiffs initiated service upon Defendant Jade Mayer on March 18, 2023 and she accepted service with direct delivery.

Ralph Rogers

16. On October 4, 2022 Plaintiffs reached out to Defendant Rogers via email, notified him of the claims being brought against him, provided a copy of the proposed complaint, and the opportunity to meet and confer. Plaintiffs received no response. (Exhibit F.) On November 11, 2022, Plaintiffs reached out to Defendant Rogers again whether he would accept service via email of the attached, filed summons and complaint—again Defendant Rogers did not provide a response.

17. Service via personal service was attempted upon Defendant Rogers on March 24, 2023 and he accepted with direct delivery. Defendant Rogers has been on notice of the claims being brought against him since then. Defendant Rogers has failed to appear or file an answer to the complaint.

Scott Brunson

18. On January 19, 2023, Plaintiffs initiated a service attempt for personal service upon Defendant Brunson. Service upon Defendant Brunson who accepted service with direct delivery on January 21, 2023. Defendant Brunson has not attempted to contact Plaintiffs' counsel regarding this action or file an answer to the Complaint.

Company Defendants

Integrity Based Marketing, LLC

19. Plaintiffs initiated service upon Defendant Integrity Based Marketing, LLC and a process server attempted to serve it on December 30, 2022, but it was not found at that address, nor does it seem to exist any longer.

Storm Fitness Nutrition, LLC

20. Plaintiffs initiated service upon Defendant Storm Fitness Nutrition, LLC and a process server attempted to serve it on December 27, 2022, but it was not found at that address, and it now has an inactive status due to tax forfeiture.

Ultra Combat Nutrition, LLC

21. Plaintiffs initiated service upon Defendant Ultra Combat Nutrition, LLC and a process server attempted service on December 26, 2022, but failed to find it by delivering to its registered agent, Law Office of William Hubbard or any information to allow further search.

Ecoloft Homes, LLC

22. Plaintiffs initiated service upon Defendant Ecoloft Homes, LLC service was attempted on December 27, 2022, but the process server was unsuccessful due to the address being listed as a different company. Further, the company Defendant is no longer active due to tax forfeiture.

Elevated Wellness Partners, LLC

23. Plaintiffs initiated service upon Defendant Elevated Wellness Partners, LLC service was attempted on December 28, 2022, but the process server was unsuccessful due to the address being for a different business. Further, the company Defendant is no longer active due to involuntary termination.

Further Defendants


Doe Individuals 1–20

24. Plaintiffs are continuing to investigate possible additional, individual defendants in this action and are in the process of discovery.

Doe Companies 21–30

25. Plaintiffs are continuing to investigate possible additional company defendants in this action and are in the process of discover.

Dated: New York, New York
December 4, 2023

By:  _____

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